

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of OLIVER, Minors.

UNPUBLISHED

July 23, 2013

No. 314883

Van Buren Circuit Court

Family Division

LC No. 05-015085-NA

Before: MURPHY, C.J., and SAAD and SERVITTO, JJ.

PER CURIAM.

Respondent mother appeals the trial court's order that terminated her parental rights to three minor children under MCL 712A.19b(3)(g) and (j). For the reasons set forth below, we affirm.

The trial court did not clearly err in finding the statutory grounds for termination were established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The children were removed because of domestic violence, alcohol abuse, and the parents' failure to attend to the medical needs of their diabetic child, A. Oliver. While respondent participated in and completed services for substance abuse and parenting education, she did not attend A's medical appointments and he returned from visits with her with blood sugar levels that were elevated and sometimes dangerously high. During the nearly two years of proceedings, the other two children were returned to respondent's care for 13 days, but were removed when respondent refused to comply with drug screens and suspicions arose that she was involved with drug activity. Respondent also had criminal charges filed against her and twice tested positive for methamphetamines. She did not visit the children in the final three months of the case because she failed to comply with drug screens, had an outstanding warrant, and was ultimately incarcerated. The trial court did not clearly err in finding clear and convincing evidence that respondent did not provide proper care and custody for the children and there was no reasonable expectation that she would be able to do so within a reasonable time considering the ages of the children. MCL 712A.19b(3)(g); *In re Trejo*, 462 Mich at 356-357. The same evidence supports the trial court's ruling that there was a reasonable likelihood, based on the conduct or capacity of respondent, that the children would be harmed if returned to her. MCL 712A.19b(3)(j); *In re Trejo*, 462 Mich at 356-357.

Respondent raises a vague argument that petitioner did not comply with the requirements of *In re Mason*, 486 Mich 142; 782 NW2d 747 (2010). In *In re Mason*, the respondent was incarcerated and unable to participate in proceedings, may not have received the service plan,

and there was no indication the petitioner facilitated the respondent's access to services or updated the service plan considering the respondent's incarceration. *Id.* at 156-158, 160. The facts of this case are not similar to those in *Mason*. Here, respondent did not miss any hearings while incarcerated, she signed a parent agency agreement, and the caseworker visited respondent in jail. Also, petitioner offered respondent numerous services throughout the lengthy proceedings, and she participated in some of them at her choosing. The trial court did not terminate respondent's parental rights on the basis of her incarceration, but because she failed to benefit from services, and failed to comply with her parent agency agreement. The record clearly reflects that respondent had the opportunity to, and did in fact, attend court hearings and participate in a treatment plan. Accordingly, *Mason* is inapplicable and respondent's argument in this regard has no merit.

Respondent contends that the termination of her parental rights violated her due process rights. "Parents have a significant interest in the companionship, care, custody, and management of their children, and the interest is an element of liberty protected by due process." *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003) (citation omitted). However, after at least one ground for termination is proven by clear and convincing evidence, "the parent's interest in the companionship, care, and custody of the child gives way to the state's interest in the child's protection." *In re Trejo*, 462 Mich at 356. The trial court did not clearly err in finding that petitioner proved the statutory grounds of MCL 712A.19b(3)(g) and (j) by clear and convincing evidence and, therefore, respondent's due process argument fails. *Id.*

The evidence also established that termination of respondent's parental rights was in the children's best interests. MCL 712A.19b(5). A child's need for stability and permanency may be considered in determining best interests. *In re VanDalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011). Here, evidence showed that the children needed stability and permanency. The plan was for them to be placed with the same relative who was interested in adoption and would offer permanency. Respondent did not offer care, protection, or permanency, and failed to visit the children for at least the last three months of the case, though visits were available if she complied with drug screens and resolved her outstanding warrants. Evidence also showed the children were doing better in placement than in respondent's care and that any bond between the children and respondent was deteriorating. The trial court did not clearly err when it found termination of respondent's parental rights was in the best interests of the children. *In re Olive/Metts*, 297 Mich App 35, 43; 823 NW2d 144 (2012); MCL 712A.19b(5).

Affirmed.

/s/ William B. Murphy
/s/ Henry William Saad
/s/ Deborah A. Servitto